

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 76**

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**Introduced by Assembly Members Frommer and Chan**  
**(Coauthors: Assembly Members ~~Bass, Evans, Gordon, Koretz,~~**  
**~~Nava, and Pavley~~ *Baca, Bass, Berg, Cohn, Coto, De La Torre,***  
***Evans, Goldberg, Gordon, Hancock, Klehs, Koretz, Leno, Levine,***  
***Lieber, Nava, Pavley, Ridley-Thomas, Ruskin, and Torrico*)**

January 3, 2005

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An act to amend Section 12803 of, to add Part 5.4 (commencing with Section 14570) to, and to repeal Chapter 12 (commencing with Section 14977) of Part 5.5 of, Division 3 of Title 1 of, the Government Code, relating to pharmaceuticals.

LEGISLATIVE COUNSEL'S DIGEST

AB 76, as amended, Frommer. Office of Pharmaceutical Purchasing.

Existing law authorizes the Department of General Services to enter into contracts on a bid or negotiated basis with manufacturers and suppliers of single source or multisource drugs, and authorizes the department to obtain from them discounts, rebates, or refunds as permissible under federal law. Existing law requires 4 state agencies to participate in the program and authorizes other state, local, and public agency governmental entities to elect to participate in the program. Existing law grants the Department of General Services authority with respect to contracting with a pharmaceutical benefits manager or other entity and exploring additional strategies for managing drug costs.

This bill would repeal these provisions. The bill would instead establish within the California Health and Human Services Agency

the Office of Pharmaceutical Purchasing with authority and duties to purchase prescription drugs for state agencies similar to that granted to the Department of General Services under the above-described provisions. The bill would also, however, require the office to be the purchasing agent for ~~additional state entities~~ *the California State University and any other state agency as directed by the Governor, would add to those entities that may elect to participate in the purchasing program, and the bill* would authorize the office to conduct specified ~~activities~~ *activities* in order to negotiate the lowest prices possible for prescription drugs. The bill would require the office, on or before February 1, 2007, *and annually thereafter*, to submit a report containing specified information to certain committees of the Legislature regarding the program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12803 of the Government Code is  
2 amended to read:  
3 12803. (a) The California Health and Human Services  
4 Agency consists of the following departments: Health Services;  
5 Mental Health; Developmental Services; Social Services;  
6 Alcohol and Drug Abuse; Aging; Rehabilitation; and Community  
7 Services and Development.  
8 (b) The agency also includes the Office of Statewide Health  
9 Planning and Development and the State Council on  
10 Developmental Disabilities.  
11 (c) The Department of Child Support Services is hereby  
12 created within the agency commencing January 1, 2000, and  
13 shall be the single organizational unit designated as the state's  
14 Title IV-D agency with the responsibility for administering the  
15 state plan and providing services relating to the establishment of  
16 paternity or the establishment, modification, or enforcement of  
17 child support obligations as required by Section 654 of Title 42  
18 of the United States Code. State plan functions shall be  
19 performed by other agencies as required by law, by delegation of  
20 the department, or by cooperative agreements.  
21 (d) The Office of Pharmaceutical Purchasing is hereby  
22 established within the agency and shall purchase prescription

1 drugs for state agencies pursuant to Part 5.4 (commencing with  
2 Section 14570).

3 SEC. 2. Part 5.4 (commencing with Section 14570) is added  
4 to Division 3 of Title 1 of the Government Code, to read:

5  
6 PART 5.4. OFFICE OF PHARMACEUTICAL PURCHASING  
7

8 14570. As used in this part, “office” means the Office of  
9 Pharmaceutical Purchasing within the California Health and  
10 Human Services Agency.

11 14571. (a) Notwithstanding any other provision of law, the  
12 office may enter into exclusive or nonexclusive contracts on a  
13 bid or negotiated basis with manufacturers and suppliers of single  
14 source or multisource drugs. The office may obtain from those  
15 manufacturers and suppliers, discounts, rebates, or refunds based  
16 on quantities purchased insofar, as permissible under federal law.  
17 Contracts entered into pursuant to this part may include price  
18 discounts, rebates, refunds, or other strategies aimed at managing  
19 escalating prescription drug prices.

20 (b) Contracts under this part shall be exempt from Chapter 2  
21 (commencing with Section 10290) of Part 2 of Division 2 of the  
22 Public Contract Code.

23 ~~(e) To the extent permitted by federal law, and subject to any~~  
24 ~~necessary federal approvals or waivers, the State Department of~~

25 (c) *The State Department of Health Services may require prior*  
26 *authorization in the Medi-Cal program pursuant to Section 1927*  
27 *of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) for*  
28 *any drug of a manufacturer that does not agree to provide rebates*  
29 *to the office for prescription drugs purchased under this part*  
30 *to the extent the department determines it is appropriate to do so in*  
31 *order to encourage manufacturer participation, and to the extent*  
32 *permitted by federal law and subject to any necessary federal*  
33 *approvals or waivers. It is the intent of the Legislature to limit*  
34 *any rebates that are obtained as a result of the establishment of a*  
35 *prior authorization requirement in Medi-Cal to drugs prescribed*  
36 *to financially needy individuals who, through the use of these*  
37 *prescribed drugs, would improve their health status and become*  
38 *less likely to enroll in the Medi-Cal program.*

39 14572. (a) The office shall be the purchasing agent for  
40 prescription drugs for all of the following state entities:

- 1 ~~(1) State Department of Health Services.~~  
2 ~~(2)~~  
3 (1) Department of Corrections.  
4 ~~(3)~~  
5 (2) State Department of Mental Health.  
6 ~~(4)~~  
7 (3) Department of the Youth Authority.  
8 ~~(5)~~  
9 (4) State Department of Developmental Services.  
10 ~~(6) Department of Veterans Affairs.~~  
11 ~~(7)~~  
12 (5) California State University.  
13 ~~(8)~~  
14 (6) Any other state agency as directed by the Governor.  
15 (b) Any state, district, county, city, municipal, *school district*,  
16 *joint powers agreement or trust that administers or pays public*  
17 *employee benefits*, or public agency governmental entity, other  
18 than a state entity specified in subdivision (a), may elect to  
19 participate in the coordinated purchasing program.  
20 14573. (a) *The office shall work with the University of*  
21 *California to identify opportunities for consolidating the drug*  
22 *purchases made by both agencies in order to lower the state's*  
23 *costs for purchasing prescription drugs. It is the intent of the*  
24 *Legislature that the University of California cooperate with the*  
25 *office in these efforts.*  
26 (b) *The office shall develop an annual work plan that provides*  
27 *a comprehensive approach to reducing the state's procurement*  
28 *costs for prescription drugs. The work plan shall detail the*  
29 *office's annual activities and the estimated savings that these*  
30 *activities are expected to achieve. The office shall use the work*  
31 *plan when reporting to the Legislature on estimated and*  
32 *achieved savings resulting from the office's activities.*  
33 (c) *The office shall participate in at least one independent*  
34 *group that develops information on the relative effectiveness of*  
35 *prescription drugs.*  
36 (d) (1) *It is the intent of the Legislature that the state provide*  
37 *parolee medications in the most cost-effective manner. In*  
38 *deciding how to purchase parolee medications, the office shall*  
39 *consider, but not be limited to, all of the following:*  
40 (A) *Contracting with a pharmacy benefits manager.*

1     (B) *Purchasing medications under pharmacy contracts used*  
2     *for prison inmates.*

3     (C) *To the extent feasible, requiring prior authorization in the*  
4     *Medi-Cal program pursuant to Section 1927 of the federal Social*  
5     *Security Act (42 U.S.C. Sec. 1396r-8) to obtain drug discounts*  
6     *for the parolee population.*

7     (2) *The office shall compare the cost of these options and*  
8     *choose the lowest cost option.*

9     14574. (a) In order to negotiate the lowest prices possible for  
10    prescription drugs for purposes of this part, the office may do all  
11    of the following:

12    (1) Establish a formulary or formularies for state programs in  
13    consultation with the affected agencies.

14    (2) Pursue all opportunities for the state to achieve savings  
15    through the federal 340B program, as established under Section  
16    340B of the Public Health Service Act (42 U.S.C. Sec. 256b),  
17    including the development of cooperative agreements with  
18    entities covered under the 340B program that increase access to  
19    340B program prices for individuals receiving prescription drugs  
20    through programs in departments described in Section 14572.

21    (3) Develop an outreach program to ensure that hospitals,  
22    clinics, and other eligible entities participate in the program  
23    authorized under Section 340B of the Public Health Service Act  
24    (42 U.S.C. Sec. 256b).

25    (b) The office, in consultation with the agencies listed in  
26    subdivision (a) of Section 14572, may investigate and implement  
27    other options and strategies to achieve the greatest savings on  
28    prescription drugs with prescription drug manufacturers and  
29    wholesalers.

30    ~~14574.—~~

31    14575. The office may appoint and contract with a  
32    pharmaceutical benefits manager or other entity for purposes of  
33    the prescription drugs purchased under this part. The  
34    pharmaceutical benefits manager or other entity may do all of the  
35    following:

36    (a) Negotiate price discounts, rebates, or other options that  
37    achieve the greatest savings on prescription drugs with  
38    prescription drug manufacturers and wholesalers.

39    (b) Purchase prescription drugs for participating state, district,  
40    county, or municipal governmental entities.

1 (c) Act as a consultant to the office.

2 ~~14575. The department~~

3 *14576. The office* may explore additional strategies for  
4 managing the increasing costs of prescription drugs, including,  
5 but not limited to, all of the following:

6 (a) Coordinating programs offered by pharmaceutical  
7 manufacturers that provide prescription drugs for free or at  
8 reduced prices.

9 (b) Studying the feasibility and appropriateness of including in  
10 the bulk purchasing programs entities in the private sector,  
11 including employers, providers, and individual consumers.

12 (c) Implementing other strategies, as permitted under state and  
13 federal law, aimed at managing escalating prescription drug  
14 prices.

15 ~~14576.~~

16 *(d) It is the intent of the Legislature that the office, State*  
17 *Department of Health Services, University of California, and*  
18 *Public Employees' Retirement System share information on a*  
19 *regular basis on drug purchasing activities.*

20 *14577. On or before February 1, 2007, and annually*  
21 *thereafter,* the office shall submit a report to the appropriate  
22 policy and fiscal committees of the Legislature on activities that  
23 have been or will be undertaken pursuant to this part. The report  
24 shall include, but not be limited to, all of the following:

25 (a) The number and a description of contracts entered into  
26 with manufacturers and suppliers of drugs pursuant to Section  
27 14571, including any discounts, rebates, or refunds obtained.

28 (b) The number and a description of entities that elect to  
29 participate in the coordinated purchasing program pursuant to  
30 subdivision (b) of Section 14572.

31 (c) Other options and strategies that have been or will be  
32 implemented pursuant to Sections 14573 and 14575.

33 (d) Estimated costs and savings attributable to activities that  
34 have been or will be undertaken pursuant to this part.

35 *(e) The identification of the collaborative activities that the*  
36 *office, State Department of Health Services, University of*  
37 *California, and Public Employees' Retirement System conducted*  
38 *in the past 12 months to reduce the cost of drug purchasing by*  
39 *the state and the savings attributable to those activities.*

- 1     *(f) The identification of opportunities to consolidate drug*
- 2     *purchases with the University of California.*
- 3     SEC. 3. Chapter 12 (commencing with Section 14977) of Part
- 4     5.5 of Division 3 of Title 1 of the Government Code is repealed.